



House of Representatives

General Assembly

File No. 585

February Session, 2018

Substitute House Bill No. 5467

House of Representatives, April 19, 2018

The Committee on Judiciary reported through REP. TONG of the 147th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

***AN ACT CONCERNING THE RETENTION OF ELECTRONIC
SURVEILLANCE RECORDINGS IN CERTAIN PREMISES LIABILITY
MATTERS.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2018*) (a) As used in this
2 section: (1) "Injury-producing event" means any instance of bodily
3 injury or death to a person while on the premises, provided such event
4 required (A) an emergency medical response, (B) the person or entity
5 having possession or control of the premises to complete a written
6 report concerning such event, or (C) the person or entity having
7 possession or control of the premises to report such event to a liability
8 insurance carrier, and (2) "premises" means a retail establishment,
9 business premises or commercial premises, but does not include a
10 dwelling unit, as defined in section 47a-1 of the general statutes.

11 (b) The following persons or entities, shall, upon having actual
12 notice of an injury-producing event, preserve the digital, video or
13 electronic surveillance recording of the injury-producing event and the

14 conditions of the premises where the injury occurred: (1) The owner or
15 tenant of such premises, (2) the agent of such owner or tenant, (3) any
16 other individual or entity having possession or control over such
17 premises, and (4) any other individual or entity who has possession or
18 control over digital, video or other electronic form of surveillance of an
19 injury-producing event on such premises. The digital, video or
20 electronic surveillance recording preserved under this subsection shall
21 be that portion of the recording that commences six hours before and
22 one hour after the injury-producing event. If the digital, video or
23 electronic surveillance technology installed at the premises at the time
24 of the injury-producing event does not allow for a recording for the
25 length of time prescribed in this subsection, the length of time for such
26 recording shall be the maximum recording time period before and
27 after the injury-producing event that can be captured utilizing such
28 technology. The person or entity responsible for the preservation of the
29 recording shall retain the original recording for a period of two years
30 commencing from the date of the injury-producing event. A person or
31 entity shall be presumed to have actual notice of an injury-producing
32 event under this subsection if such event required (A) an emergency
33 medical response, (B) the person or entity having possession or control
34 of the premises to complete a written report concerning such event, or
35 (C) the person or entity having possession or control of the premises to
36 report such event to a liability insurance carrier.

37 (c) During the two-year period commencing on the date of the
38 injury-producing event, a person who experienced an injury-
39 producing event or the legal representative of such person may request
40 disclosure of the digital, video or electronic surveillance recording
41 preserved under subsection (b) of this section. A request for disclosure
42 from the legal representative of such person shall be accompanied by
43 written documentation that evidences the legal representative's
44 authority to act on behalf of such person. The person or entity
45 responsible for the preservation of the recording shall disclose such
46 recording to the person making the request not later than thirty days
47 after the date of receiving the request for disclosure and may request a
48 reasonable, cost-based fee for such recording. The recording shall be

49 disclosed in its original recorded format and a readable format, if
50 necessary, in order to ensure that the person who experienced an
51 injury-producing event or the legal representative of such person is
52 able to view the surveillance. As used in this section, "reasonable, cost-
53 based fee" means the cost of any supplies used to produce the
54 recording and, if a request is made that a recording be mailed to a
55 person or his or her legal representative, postage fees.

56 (d) In addition to any other remedy provided by law or rule of the
57 court to an injured person, the failure on the part of a person or entity
58 responsible for the preservation and disclosure of the digital, video or
59 electronic surveillance recording to disclose the recording pursuant to
60 subsection (c) of this section, shall preclude such person or entity from
61 using the recording in any legal proceeding by an injured person,
62 except a trial judge may allow use of any such digital, video or
63 electronic surveillance by such person upon a showing of good cause,
64 setting forth the reasons why the digital, video or electronic
65 surveillance recording could not be disclosed within the time period
66 prescribed in subsection (c) of this section.

67 (e) The provisions of this section do not alter or amend any
68 discovery or disclosure obligation otherwise provided in the general
69 statutes or by rules of the court.

70 (f) If a person or entity required to disclose a digital, video or
71 electronic surveillance recording under subsection (c) of this section
72 objects to such disclosure, such person or entity may file an objection
73 to the requested disclosure with the superior court for the judicial
74 district in which the injury-producing event occurred. The objection
75 shall (1) identify the name and address of the person making the
76 request for disclosure and the name and address of the person
77 objecting to the request for disclosure, and (2) detail the reasons for the
78 objection and why disclosure should not be required. The court shall
79 notify all persons affected by the objection to disclosure and shall
80 schedule a hearing on such objection not later than thirty days
81 following the date of filing the objection. At any such hearing,

82 disclosure to the injured person shall be favored and the person
83 objecting to disclosure shall prove by clear and convincing evidence
84 that disclosure would significantly impede the business of the person
85 or entity objecting to the disclosure of the recording or significantly
86 compromise the security of the premises. If the objecting party satisfies
87 this burden, then disclosure shall not be required under this section.
88 Nothing in this subsection shall negate any other disclosure or
89 discovery requirement if a premises liability lawsuit is filed by the
90 injured party.

91 (g) The provisions of this section do not require the owner or tenant,
92 the agent of an owner or tenant or any other individual or entity
93 having possession or control over such premises to (1) install video
94 surveillance equipment on such premises, or (2) disclose a recording
95 under subsection (c) of this section during the pendency of any
96 criminal proceeding related to the injury-producing event.

97 (h) The provisions of this section shall not apply to (1) any
98 government-owned or controlled premises, (2) any airport, or (3) if the
99 injury-producing event occurred at a retail establishment, business
100 premises or commercial premises that employs twenty or fewer
101 employees, whether full or part-time.

This act shall take effect as follows and shall amend the following sections:		
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Section 1	October 1, 2018	New section
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JUD *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note***State Impact:*** None***Municipal Impact:*** None***Explanation***

The bill requires businesses to retain surveillance recordings and does not result in a fiscal impact to the state or municipalities.

The Out Years***State Impact:*** None***Municipal Impact:*** None

OLR Bill Analysis**sHB 5467*****AN ACT CONCERNING THE RETENTION OF ELECTRONIC SURVEILLANCE RECORDINGS IN CERTAIN PREMISES LIABILITY MATTERS.*****SUMMARY**

This bill requires the owners or other parties in control of a retail, business, or commercial premises (“businesses”) to preserve for two years, surveillance recordings related to “injury-producing events” that occur on the premises. The requirement only applies if the business had actual notice that the event occurred.

The bill sets related procedures. For example, it:

1. prohibits a business that fails to disclose the recording upon the injured party’s request from using the video during a later lawsuit, unless it can show good cause for the nondisclosure, and
2. requires a business objecting to disclosure to prove by clear and convincing evidence that certain standards are met.

The bill’s requirements do not apply to (1) dwelling units; (2) businesses with 20 or fewer employees, whether full or part time; (3) government-owned or -controlled premises; and (4) airports. It also does not:

1. alter any discovery or disclosure obligations otherwise provided by statute or court rules or
2. require a business owner or anyone else in control of the premises to (a) install video surveillance equipment or (b) disclose a recording while a related criminal proceeding is

pending.

EFFECTIVE DATE: October 1, 2018

RECORDINGS OF INJURY-PRODUCING EVENTS

Definition

Under the bill, an “injury-producing event” is any instance of bodily injury or death to someone while on the premises that required (1) an emergency medical response or (2) the person or entity having possession or control of the premises to complete a written report about the event or report it to a liability insurance carrier. Under these circumstances, the person or entity is presumed to have actual notice that the event occurred.

Retention Requirement

The bill requires certain persons or entities, if they have actual notice of an injury-producing event at a business, to preserve the digital, video, or electronic surveillance recording of the event and the premises’ condition.

Under the bill, the retention requirement applies to the following:

1. the owner or tenant of the premises, or the owner’s or tenant’s agent, or
2. any other individual or entity with possession or control over the premises or the surveillance recording.

The bill requires the business to preserve the portion of the recording beginning six hours before the injury-producing event, through one hour after the event. If the technology installed at the premises does not allow for that recording length, the business must preserve the maximum amount of recorded footage the technology allows.

The person or entity responsible for preserving the recording must keep the original recording for two years after the event.

Disclosure Requirement

Under the bill, for the two years after the event, the injured party or his or her legal representative may request that the business disclose the recording. If a legal representative requests disclosure, he or she must also provide documentation of authority to act on the injured party's behalf. The business must disclose the recording within 30 days after receiving the request and may ask the requesting party to pay for (1) the cost of any supplies used to produce the recording and (2) postage fees, if applicable.

The business must disclose the recording in its original format and a readable format, if necessary, to ensure that the injured party or his or her legal representative may view the footage.

Nondisclosure

Under the bill, if the business fails to disclose the recording, it is prohibited from using it in any legal proceeding by the injured party, unless the court allows otherwise upon a showing of good cause of why disclosure was not possible.

This is in addition to any other remedy provided to the injured party by law or court rules.

Objection to Disclosure; Hearing

The bill also allows the business, rather than disclosing the recording, to file an objection in Superior Court. The objection must (1) identify the name and address of the parties and (2) explain the reasons for objecting and why disclosure should not be required. The court must notify all affected persons and schedule a hearing within 30 days after the filing.

At the hearing, disclosure must be favored. If the objecting party proves by clear and convincing evidence that disclosure would significantly impede its business or significantly compromise the security of the premises, then disclosure is not required.

The bill provides that these provisions do not negate any other

disclosure or discovery requirement if the injured party files a premises liability lawsuit.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 36 Nay 5 (04/03/2018)